

From: [Barbara Nann](#)
To: [Gary Miller](#); [Jessica Hernandez](#); [Anne Foster](#)
Subject: Fw: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")
Date: 01/31/2012 11:21 AM

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----- Forwarded by Barbara Nann/R6/USEPA/US on 01/31/2012 11:21 AM -----

From: Barbara Nann/R6/USEPA/US
To: "Cermak, John F." <jccermak@bakerlaw.com>
Cc: aaxe@winstead.com, "Inglin, Sonja A." <singlin@bakerlaw.com>
Date: 01/12/2010 08:26 AM
Subject: Re: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

We can have a call if you like. I cannot speak with any authority on the suggested changes since I will not have the time to fully review the document. I have already forwarded the marked up AOC to headquarters and Philip for review. My only initial comment (without having read the suggested changes) is that the site stabilization is a time-critical removal which requires an imminent and substantial endangerment finding. The confined facility being proposed is a non-time critical removal and a finding of imminent and substantial endangerment is not required. If you still want to talk, I am available anytime except 10 am central call.

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**Re: San Jacinto--Revised Administrative Settlement Agreement
and Order On Consent For Removal Action ("AOC")**

Cermak,
John F. to: Barbara Nann

01/12/2010
07:46 AM



9549072

Cc: aaxe, "Inglin, Sonja A."

Thank you Barbara. Is there anyone we should speak to you in your absence? Also, should we have a call today to discuss the revisions to the AOC?

John

From: Nann.Barbara@epamail.epa.gov
To: Cermak, John F.
Cc: aaxe@winstead.com ; Inglin, Sonja A.
Sent: Tue Jan 12 04:45:48 2010
Subject: Re: San Jacinto--Revised Administrative Settlement Agreement and Order On Consent For Removal Action ("AOC")

Thank you for the AOC. There is no deadline for the submittal date for the marked up AOC. I just wanted to get the AOC before my vacation so that I could send the suggested changes to headquarters for review. That way when I get back I can sit down and review with headquarters what changes EPA can make to the AOC and get it back to you with plenty of time to review the changes EPA makes and give you enough time to review whether your client would like to sign the AOC. I have been given by my management the deadline of the end of this month to negotiate an AOC for a site stabilization removal and I want to utilize all the time we have as productively as possible. My client is on a tight deadline and they are wedded to the idea of moving forward on site stabilization at the end of the month.

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**San Jacinto--Revised Administrative Settlement Agreement
and Order On Consent For Removal Action ("AOC")**

Cc: aaxe, "Inglin, Sonja A."

Barbara:

Attached for your review is a proposed draft of an AOC that addresses time-critical site stabilization activities ("Draft Site Stabilization AOC") that we are submitting to you on behalf of both International Paper Company ("International Paper") and McGinnes Industrial Maintenance Corporation ("MIMC"). You also will be receiving a draft scope of work. We are providing this draft to you in response to the deadline you set in your email of last Thursday, in which you asked for the draft by today (rather than, as had previously been discussed and agreed upon, by January 20th and upon your return from your vacation). We have made a number of revisions today to incorporate changes that were suggested by Phil Allen to Sections VII and VIII. Some of the final changes (in particular, those with respect to the impact of access problems on deadlines for commencing work) that have not yet been reviewed or discussed in detail with Phil. These additional changes have not necessarily been reviewed and approved by International Paper or MIMC, but we will advise you tomorrow if there any final changes that need to be made to incorporate and address those revisions.

We understand that you will be out of the office on vacation beginning on January 13th. We are prepared to make ourselves available should there be any aspect of the Draft Site Stabilization AOC that you would like to discuss tomorrow, before you leave for vacation. To move forward, we will also need to have an opportunity to review the Action Memorandum and the Site Map that are to be attached as Appendix A and Appendix C, respectively, to the Site Stabilization AOC. Can you please advise as to timing for providing a draft of these documents to us?

We patterned the attached draft on the proposed AOC that you circulated on November 20th ("Draft AOC"), but also taking into account issues and concerns about the Draft AOC that were raised in our December 10th call regarding the Draft AOC. We have proposed deadlines in the Site Stabilization AOC consistent with the scope of the

activities it addresses (*i.e.*, the stabilization of the northwest corner of the Tract and the installation of security fencing). With respect to activities under the second proposed AOC (addressing the design and construction of the confined disposal facility at the Site), different deadlines may be appropriate.

A redline showing changes from the Draft AOC is attached. Below is a brief summary of provisions of the Draft Site Stabilization AOC that are intended to assist you in your review of it. In reviewing the redline, please bear in mind that some of the text that has not been changed nonetheless shows up as revised text in green in the redline.

Findings of Fact and Conclusions of Law/Determinations (Sections IV and V, Paragraphs 9 - 18). The Draft AOC included all of the same findings of fact as the Unilateral Administrative Order (“UAO”) for the Remedial Investigation/Feasibility Study (“RI/FS”). The UAO contained detailed Findings by EPA supportive of its action under §106 of CERCLA. For purposes of the Draft Site Stabilization AOC, we have pared down the findings of fact since an “imminent and substantial endangerment” is not required for the AOC, which represents a settlement between the Parties relative to work to be performed at the Site. We have also taken a similar approach with respect to the Conclusions of Law/Determinations.

Access to Information (Section X, Paragraphs 31-34). As discussed on December 10, 2009, we have deleted the requirement in Paragraph 58 of the Draft AOC requiring Respondents to maintain a detailed privilege log, given the burden and expense associated with doing so.

Record Retention (Section XI, Paragraphs 35-36). We have proposed to reduce the record retention period from ten (10) years to five (5) years.

Emergency Response and Notification of Releases (Section XIII, Paragraphs 38 -39). We have clarified the language in Paragraph 65 of the Draft AOC to exclude from the notification requirement any ongoing release of which EPA is already aware and those releases that do not exceed the reportable quantities under CERCLA.

Payment of Response Costs (Section XV, Paragraphs 41-43). For purposes of the Site Stabilization AOC, and consistent with our

discussions during our call on December 10 , Respondents propose to pay EPA's response costs incurred after the Effective Date of the Draft Site Stabilization AOC in connection with the implementation of the work required by the AOC. We have retained use of the term "Future Response Costs" to describe the costs that Respondents would pay. The definitions of, and references to, "Past Response Costs" and "Interim Response Costs" have been deleted. In Paragraph 42(a), we have provided for a means by which Respondents can seek additional detail regarding response costs submitted to them for payment. Stipulated Penalties (Section XVIII, Paragraphs 50-58). We have provided for stipulated penalties to apply in the case of late reports (and have revised the proposed penalty amounts) and for a "work takeover" penalty in the amount of \$15,000.

Respondents' Covenant Not to Sue (Section XXI, Paragraph 63). We have made changes to the scope of the covenant not to sue so that it is consistent with the scope of the claims being settled, and also preserves Respondents' rights to pursue other potentially responsible parties with respect to the Site.

Financial Assurances (Section XXVI, Paragraphs 72-75). We have proposed a financial assurance amount consistent with the expected scope and cost of the time-critical site stabilization activities.

Additional Removal Action. As discussed during our December 10, 2009 conference call, we have proposed the deletion of Section XXVII of the Draft AOC. This section is not required by EPA's model AOC and does not make sense in the context of the work that is agreed to be undertaken. It also is so open-ended that the Respondents would have no reasonable means of understanding the obligations that are being imposed upon them.

Notice Provision (Section XXIX, Paragraph 80). We have added a notice provision to supplement the provisions of the Draft AOC regarding notice.

As noted above, we are available to discuss any questions that you may have regarding the attached draft.

Regards.

John

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